

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Telecommunications Relay Services And Speech-to-Speech) CG Docket 03-123
Services for Individuals with Hearing and Speech Disabilities)

To: The Commission

REQUEST FOR CLARIFICATION OF DECLARATORY RULING

Hands On Video Relay Services, Inc. (“Hands On”),¹ by its counsel, requests clarification of the Commission’s May 9, 2006 Declaratory Ruling, FCC 06-57, 71 FR 30818 (May 31, 2006). Clarification is sought to determine whether Sorenson Communications, Inc.’s (“Sorenson”) practice of intercepting VRS calls placed from the VP-100 device bound for completion by other providers violates the Declaratory Ruling’s prohibition on degrading service on calls made through other providers. For the reasons set forth below, it is Hands On’s view that the Sorenson practice is in violation of the Declaratory Order and is inimical to the functionally equivalent standard governing the relay service.

In the Declaratory Ruling, the Commission confirmed that “all VRS consumers must be able to place a VRS call through any of the VRS providers’ service, and all VRS providers must be able to receive calls from, and make call to, any VRS consumer.”

~~*Telecommunications Relay Services*, FCC 06-57, para. 29. The Commission further pointed~~

¹Hands On is a VRS provider, through contract, to AT&T Corp. (“AT&T”). Hands On is also a certified provider of VRS for the State of Washington’s Telecommunications Relay Service (“TRS”) program. Hands On has been providing VRS since July of 2002, originally in a developmental mode, since November of 2002 under contract with AT&T, and subsequently with the State of Washington as well as with AT&T.

out that “the ability to make a telephone call ‘without delay’ is fundamental to [a] rapid and efficient communications system.” *Id.* at n.110, quoting *2005 VRS Speed of Answer Order*, 20 FCC Rcd 13165, 13168, para. 6. The Commission accordingly held that “a provider may not block calls so that VRS equipment cannot be used with other providers’ service. In addition, a provider may not take other steps that restrict a consumer’s unfettered access to other providers’ service. This includes the practice of providing degraded service quality to consumers using VRS equipment or service with another provider’s service.” *Id.* at para. 34.

The Declaratory Ruling becomes effective 60 days after publication in the Federal Register. Federal Register publication of the item occurred May 31, 2006. Therefore, the Declaratory Ruling becomes effective July 31, 2006. Providers in violation of the ruling after July 31, 2006 are ineligible to draw from the Interstate TRS Fund. *Id.* at para. 29.

The Declaratory Ruling was principally directed at the marketing activities of Sorenson Communications, Inc., which distributed a videophone device, called the VP-100, to VRS consumers and which blocked VRS consumers from accessing other VRS providers. *See Id.* at paras. 16-20. Prior to the release of the Declaratory Ruling, Sorenson announced that effective July 1, 2006 it would remove the block from its VP-100 videophones. *Id.* at n.89.

Although Sorenson removed the block on or about July 1, 2006, Sorenson proceeded to degrade access to other VRS providers by the following method. When a VRS consumer seeks to access a competing VRS provider, Sorenson intercepts the call and displays the following message on VP-100 units: “You are dialing a Video Relay Service (VRS) that does not use or support Sorenson Services. Sorenson cannot ensure the quality of interpreting

services or the video clarity that is offered by other VRS providers. Do you wish to continue to place this call?” A copy of Sorenson’s intercept screen is attached to this request.

Sorenson’s intercept screen plainly violates the intent and the letter of the Declaratory Ruling. Placing an intercept in the way of a VRS user seeking to make a call delays the call in violation of the Commission’s pronouncement that “the ability to make a telephone call ‘without delay’ is fundamental to rapid and efficient communications.” Declaratory Ruling at n. 110. Moreover, the mere act of placing any intercept in the way of the VRS user seeking to make a call amounts to a blocking of that call because it indicates that Sorenson is controlling the VP-100’s routing of the call, rather than the VRS consumer.

Sorenson’s practice of intercepting calls destined for competing VRS providers plainly violates Section 201(b) and 202 of the Communications Act of 1934, as amended (“Act”). The practice violates Section 202 because it serves to discriminate against calls bound for competing VRS providers. It violates Section 201(b) because it is plainly an unjust and unreasonable practice designed merely to maintain a competitive edge. Although Sections 201 and 202 are applicable only to common carriers, in Hands On’s view there is no doubt that VRS providers are common carriers.

Section 3 of the Act, defines a “common carrier” as “any person engaged as a common carrier for hire, in interstate or foreign communication by wire, or radio” Section 225(a)(1) of the Act, which governs relay service, similarly defines a common carrier. As the court made clear in *National Ass’n of Regulatory Utility Com’rs v. FCC*, 533 F.2d 601 (D.C. Cir. 1976), the sine qua non of common carrier status is a quasi-public character which arises

out of the undertaking to carry for all people indifferently. Particular services offered need not be practically available to the entire public. A specialized carrier whose services are of possible use to only a fraction of the population may nonetheless be a common carrier if it holds itself out to serve indifferently all potential users. It is not essential that there be a statutory or other legal commandment to serve indiscriminately; rather it is the practice of such indifferent service that confers “common carrier” status. *Id.* See also *Beehive Telephone, Inc. v. Bell Operating Cos.*, 78 Rad. Reg 2d (P&F) 1376 (1995) (“key feature of common carriage under Section 3(h) of the Act is the provision of service indifferently to all potential customers”).

VRS providers are under a common carrier obligation. This is plain from FCC Rule Section 64.604(a)(3)(i), which provides that “Consistent with the obligations of telecommunications carrier operators, [communications assistants] are prohibited from refusing single or sequential calls or limiting the length of calls utilizing relay services. Similarly, Section 64.604(a)(3)(ii) requires TRS providers to be capable of handling any type of call normally provided by telecommunications carriers unless the Commission finds that it is not technically feasible to do so. These provisions make plain that VRS providers must, by regulation, hold themselves out to serve the deaf, hard of hearing and speech disabled public indifferently. Moreover, VRS providers are fulfilling a duty of service Section 225 imposes directly on common carriers.

If there were any doubt that relay providers are common carriers, that doubt should be put to rest by review of the Commission’s hearing designation order in *Publix Network*

Corporation, 17 FCC Rcd 11487 (2002). There, in investigating Publix's purported TRS operation, the Common Carrier Bureau sent a letter to Publix questioning whether Publix was operating as a common carrier. Among the issues the FCC designated for hearing in that proceeding were "to determine ... whether Publix Network's authorization to operate as a common carrier should be revoked," and "to determine whether ... the Publix Companies, and/or its principals should be ordered to cease and desist from the provision of any interstate common carrier services without the prior consent of the Commission." *See also* FCC Rule Section 64.605(a)(2)(vii) (requiring demonstration of common carrier status for FCC certification of VRS or IP Relay providers to draw from the Interstate TRS Fund).

Even if Sections 201 and 202 were not directly applicable to relay providers, the functionally equivalent standard of Section 225 plainly incorporates Section 201(b)'s prohibition on unjust and reasonable practices and Section 202's prohibition on discrimination. It is Section 225's intent that relay service for deaf and hard of hearing persons be functionally equivalent to telephone service for hearing persons. Plainly then, there is no room in relay service for unjust or unreasonable practices or for discrimination, just as there is no room for these practices in telephone service for hearing persons.

Viewed in this light, Sorenson's practice of placing an intercept on calls from VP-100s to other providers is plainly a violation of the functional equivalent mandate. Imagine if AT&T distributed a telephone to the public which intercepted calls destined for other long distance providers, stated that AT&T could not vouch for the quality of the telephone transmission, and asked if the caller still desired to make the call. The Commission would not stand for this. Yet,

that is exactly what Sorenson is doing here. Indeed, Sorenson seems to have taken a page right out of the history books by attempting to peg its intercept message to supposed quality concerns. This was exactly how the old Bell System sought to prevent interconnection and competition. *See, e.g., Hush-a-phone Corporation v. United States*, 99 U.S. App. D.C. 190, 238 F.2d 266 (1956); *Use of The Carterfone Device in Message Toll Telephone Service*, 13 F.C.C.2d 420, 13 Rad. Reg. 2d (P & F) 597 (1968).

If Sorenson wants to raise quality concerns as to other VRS providers, let it do so in its advertising, on its web site, or at meetings and conventions where deaf and hard of hearing persons gather. It has no right to interfere with in-progress calls being made by deaf and hard of hearing persons.

HOVRS has been informed by a number of VRS consumers who attempted to make calls through VP-100's that they found the intercept to be intimidating and confusing, much like the famed West Palm Beach butterfly ballot. Several VRS users advised after receiving the intercept they were reluctant to make a call through another provider. Apparently some persons also have been led to believe that their personal phone directories, held by the VP-100, will be deleted if they make a call to another provider. It is not known if Sorenson representatives are responsible for this item of misinformation. What is clear is that the intent of the Sorenson message is to dissuade VRS consumers from exercising their right to make a call through the provider of their choice. Sorenson has no right to interrupt a call in progress or delay that call in order to disparage and question the service of the provider the caller has

selected to complete his call. After all, VRS consumers should be able to judge for themselves whether there is any problem with the quality of the interpreting or video.

Finally, what Sorenson is doing is very dangerous. A consumer making an urgent call or an emergency call needs to place that call immediately and should not have to navigate through the maze of a confusing intercept message designed to dissuade him from making the call.

Hands On therefore requests the Commission to clarify that the Sorenson intercept is in violation of the Declaratory Ruling and that should Sorenson persist past July 31, 2006 in intercepting calls bound for another provider, Sorenson would be ineligible to draw from the Interstate TRS Fund.

Respectfully submitted,

HANDS ON VIDEO RELAY SERVICES, INC.

By _____ /s/
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2 missed calls

Sorenson VRS™

Dial

Attention

You are dialing a Video Relay Service (VRS) that does not use or support Sorenson Services. Sorenson cannot ensure the quality of interpreting services or the video clarity that is offered by other VRS providers. Do you wish to continue to place this call?

☐

In the future, do not show this message.

Yes

No

ASL Help Video

CERTIFICATE OF SERVICE

I, George L. Lyon, Jr., do hereby certify that I have caused copies of the foregoing Opposition to Waiver Request to be served on the following persons via email on July 24, 2006:

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